

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 - - - - - x  
4 SECURITIES INVESTOR PROTECTION  
5 CORPORATION,  
6 Plaintiff,  
7 v. Adv. Case No. 08-01789(SMB)  
8 BERNARD L. MADOFF INVESTMENT  
9 SECURITIES, LLC,  
10 Defendant.  
11 - - - - - x  
12 IRVING H. PICARD, TRUSTEE FOR  
13 THE SUBSTANTIVELY CO.,  
14 Plaintiff,  
15 v. Adv. Case No. 12-01001(SMB)  
16 HALL, ET AL.,  
17 Defendants.  
18 - - - - - x  
19 PICARD,  
20 Plaintiff,  
21 v. Adv. Case No. 09-01172(SMB)  
22 CHAIS, ET AL.,  
23 Defendants.  
24 - - - - - x  
25

1 U.S. Bankruptcy Court  
2 One Bowling Green  
3 New York, New York  
4

5 January 15, 2015  
6 10:02 AM  
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10 B E F O R E :  
11 HON STUART M. BERNSTEIN  
12 U.S. BANKRUPTCY JUDGE  
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15 ECRO: MICHELLE BROWN  
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1 Hearing re: 08-01789 - Trustee's Motion to Approve Fifth  
2 Allocation of Property to the Fund of Customer Property and  
3 Authorizing Fifth Interim Distribution to Customers.

4

5 Hearing re: Letter in re: Motion For An Order Approving  
6 Fifth Allocation Of Property To The Fund Of Customer  
7 Property And Authorizing Fifth Interim Distribution To  
8 Customers (related document(s)8862)

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10 Hearing re: 12-01001 - Status Conference

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12 Hearing re: 09-01172 - Status Conference

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25 Transcribed by: Dawn South

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1 P R O C E E D I N G S

2 THE COURT: Good morning.

3 THE CLERK: Good morning.

4 THE COURT: Madoff.

5 MR. SHEEHAN: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. SHEEHAN: David Sheehan from Baker & Hostetler  
8 for the trustee, Irving Picard.

9 Today is the return date of our application for a  
10 further allocation to the customer fund. It is actually a  
11 significant day in the sense that for the longest time, as  
12 Your Honor knows, it was widely reported that we were  
13 allocated at approximately \$9.8 billion, but as a result of  
14 settlements Your Honor approved last December we are seeking  
15 today to go past the \$10 billion mark, and the actual  
16 allocation will be \$10,499,000,000 and some additional  
17 thousands thrown in.

18 So what we're seeking today, Your Honor, is just  
19 to allocate that amount to the fund, and in addition I  
20 should tell Your Honor, that over the last month of December  
21 we were also able to achieve at yearend an additional  
22 \$102 million in settlements, you know, principally in the  
23 good faith cases with one exception being the Bloomenthal  
24 settlement, which Your Honor also approved, which generated  
25 about \$50 million. That will give us the ability to add

1 \$102 million to the fund, and as Your Honor knows from our  
2 application what we always seek to do in recognition of the  
3 fact that things like this can occur, is that we seek in the  
4 order Your Honor's permission to add to the fund so that we  
5 don't have to come back in for another allocation, and what  
6 we're seeking here today to do is add that \$102 million to  
7 the fund, which will result in an addition of \$30.8 million,  
8 that's approximately, Your Honor, to the 322.4 million that  
9 we were seeking to distribute while we have our application  
10 before Your Honor. So and approximately what we'll be  
11 distributing is \$353.2 million as a result of the  
12 application that we have made today.

13 There is only one objection, it was a letter we  
14 received from an individual whose claim was denied many  
15 years ago as the net winner for approximately \$43,000.

16 THE COURT: Is that Ms. Labrioli (ph)?

17 MR. SHEEHAN: Yeah, that is.

18 MR. SHEEHAN: Is Ms. Labrioli in Court today or is  
19 -- represented today? The record should reflect there's no  
20 response.

21 MR. SHEEHAN: All right. Thank you, Your Honor.

22 I'm not going to -- I don't believe that objection  
23 has any merit and obviously she's not here prosecuting it,  
24 and I would ask that Your Honor overrule it and approve the  
25 order that we've sought here this morning and which will



1 result in a significant distribution in the sense that by  
2 the end of this distribution we will have fully satisfied  
3 customers with allowed claims of up to \$975,000, and  
4 hopefully later this year we'll be back before Your Honor  
5 and take that number over a million dollars.

6 Thank you, Your Honor.

7 THE COURT: On a percentage basis how much has  
8 been distributed on allowed claims?

9 MR. SHEEHAN: 48.5 percent.

10 THE COURT: With this distribution.

11 MR. SHEEHAN: With this distribution, yes, Your  
12 Honor.

13 THE COURT: All right. Is there anyone who wants  
14 to be heard in connection with the motion?

15 MR. BELL: Your Honor, Kevin Belcher on behalf of  
16 the Securities Investor Protection Corporation.

17 The passing of \$975,000 allowed claim being fully  
18 satisfied is a significant event and being within a point  
19 and a half of getting 250 or above 50 cents on the dollar is  
20 also a significant point.

21 And as Your Honor read in the motion there are  
22 significant dollars in reserve for the time-based damages  
23 aspect, which is before the circuit, and other matters that  
24 are in litigation that would bring us up into the shadow of  
25 60 percent, and SIPC would ask the Court to approve this so

1 we can get this money back to the victims.

2 THE COURT: Okay. Let me first deal with the  
3 objection.

4 Ms. Labrioli's objection in her letter dated  
5 January 7 is that the motion should not be decided before  
6 they've gone before a vote in Congress, and I don't see any  
7 basis for that, so I'll overrule that objection, and I'll  
8 approve the distribution. So you can drop off on order.

9 MR. SHEEHAN: Thank you very much, Your Honor.

10 THE COURT: All right.

11 (Recessed at 10:6 a.m.; reconvened at 10:13 a.m.)

12 THE COURT: I'll hear the other Madoff matter now.

13 (Pause)

14 MR. GARRITY: Good morning, Your Honor. Jim  
15 Garrity, I'm the court-appointed mediator in this matter,  
16 and this is a status conference that Your Honor agreed to  
17 hold for today, but just as a preliminary matter, Judge, I  
18 think there were a couple of parties who were dialing in,  
19 and I'm just not sure if we got them connected.

20 THE COURT: Is anyone on the phone in connection  
21 with the status conference in the Madoff matter?

22 MR. GELFAND: Yes, Your Honor, Marvin Gelfand from  
23 Weintraub Tobin representing the Bottle Brush and  
24 (indiscernible) claimants is present.

25 THE COURT: Okay.

1 MS. GORDON: Also, Your Honor, Alexandra Robert  
2 Gordon from the Office of the California Attorney General,  
3 representing Attorney General, Kamala Harris.

4 THE COURT: Thank you for joining us so early in  
5 the morning.

6 MS. GORDON: No, thank you for letting us phone  
7 in, Your Honor.

8 THE COURT: Okay. Go ahead, Mr. Garrity.

9 MR. GARRITY: Thank you, Your Honor.

10 I just -- would like to just give you some very,  
11 very brief background.

12 Your Honor, this mediation arises out of two  
13 adversary proceedings that are pending before Your Honor in  
14 the Madoff matters. They involve claims. One of the  
15 adversary involves claims against an individual, now the  
16 estate of Stanley Chais.

17 Mr. Chais was a money manager who raised money  
18 through limit partnerships. He raised hundreds of millions  
19 of dollars, collected fees, and much of the money, allegedly  
20 all of the money, he raised was then invested in the Madoff  
21 funds.

22 So he invested the limited partnership money in  
23 Madoff, he did so for his own -- he also invested for his  
24 own benefit and for the benefit of family and related  
25 parties.

1           So what we have from the Chais perspective, Your  
2           Honor, the parties are the estate of Stanley Chais,  
3           Mr. Chais died after the litigation began, so the estate of  
4           Stanley Chais and related parties, as well as some family  
5           members and other related parties who we refer to as the  
6           Chais-related parties. So we have the estate of Stanley  
7           Chais and the Chais-related parties.

8           And as I indicated, Your Honor, what this  
9           mediation is about was an attempt to try to resolve  
10          competing claims against the estate as well as the Chais-  
11          related parties and the defenses that the estate and the  
12          Chais-related parties had to those claims.

13          Now the competing claims consist of the following.  
14          The first is the trustee. And as I indicated, Your Honor,  
15          that arises out of an adversary proceeding that was  
16          commenced in May of 2009, and as Your Honor is familiar with  
17          this type of litigation it was a clawback litigation  
18          alleging, without limitation, fraudulent conveyances, actual  
19          constructive, actual fraud under state law, federal law, et  
20          cetera. The trustee on behalf of the Madoff estate seeking  
21          to recover funds that had been paid through the Madoff  
22          estate to Mr. Chais, the estate, as well as to the Chais-  
23          related parties. And again, you had defenses being asserted  
24          in that. And of course the trustee is represented by the  
25          Baker Hostetler firm and the estate of Stanley Chais

1 represented by Milbank, Tweed, Mr. Hirschfeld who is here in  
2 the court today, and the Chais-related defendants being  
3 represented by among others the Sills Cummis firm and  
4 Mr. Sherman -- Andrew Sherman, who is also in court today.

5 Another party competing for those funds is the  
6 State of California. And you've heard that Deputy Attorney  
7 General Alexandra Robert Gordon is on the phone today, and  
8 that was -- an action was brought by the State of California  
9 seeking disgorgement of profits, restitution, civil  
10 penalties, and an injunction. They basically in very broad  
11 strokes, you know, alleged that Mr. Chais, through his  
12 business operations, had defrauded his clients, again, they  
13 were seeking an injunction seeking restitution and other  
14 relief through the State Attorney General's Office. So that  
15 was a second party. And that litigation began after the  
16 fraudulent conveyance action began.

17 And then finally there was an action -- is an  
18 action that has been brought on behalf of a group of  
19 plaintiffs. We refer to them as the California plaintiffs.  
20 Mr. Gelfand, who's on the phone, represents some of them,  
21 and Mr. Weprin who is in the court with us today represents  
22 another group of them.

23 And in essence, Your Honor, what they allege is  
24 that on behalf of the individuals who invested through the  
25 limited partnerships, that those individuals were defrauded.

1 And I say broad strokes, all without prejudice for anybody  
2 -- for all the folks on the call, you know, to their -- how  
3 they would want to describe the litigation.

4 But the long and the short of it, Judge, is they  
5 looked and they said we were defrauded and they seek to  
6 recover funds both from the estate of Stanley Chais, but  
7 also from the Chais-related defendants.

8 So that if you sort of step back and you look at  
9 the estate you've got three parties. The trustee, the State  
10 of California, and the California plaintiffs claiming and  
11 dealing with the defenses that the estate has trying to  
12 collect that money. And then as to the Chais-related  
13 defendants you have two parties. The trustee and the  
14 California plaintiffs.

15 And so at some point -- I'm sorry -- in January of  
16 2012 in the light and the face of all that litigation the  
17 trustee commenced an adversary proceeding in this court, and  
18 that's really the vehicle that has, you know, the vehicle --  
19 that created the vehicle for putting this mediation  
20 together. And what the trustee sought in substance and  
21 without limitation was an injunction.

22 THE COURT: Who'd he sue?

23 MR. GARRITY: He sued the attorney general, State  
24 of California, as well as the California plaintiffs. And so  
25 he wanted to be able to go forward with his clawback

1 litigation and wanted those parties to remain on the  
2 sideline.

3 As I understand it, Your Honor, during A -- I was  
4 not present -- and during a conference Judge Lifland, with  
5 the parties for all or some of them, I guess eventually all  
6 of the parties before him said look, what we need to do is  
7 go to mediation, you have a finite amount of money that's  
8 not fixed because there are disputes over whether, you know,  
9 the extent of the estate's liability, the extent of the  
10 Chais-related parties' liability, so you've got to try to  
11 resolve that issue. You then need to resolve -- try to  
12 resolve the competing claims to that -- those funds of  
13 money. Again, the State of California, the California  
14 plaintiffs, and the trustee. And so I was appointed to  
15 undertake that task.

16 During -- and I believe the appointment was in --  
17 bear with me for one second, Your Honor. It was in August  
18 of 2012. And once the mediation began, Judge, all of the  
19 litigation in California, the State AG as well as the  
20 California plaintiffs' actions were stayed, and as well as  
21 the clawback action, everything has been put on hold while  
22 the parties attempt to resolve the competing disputes to  
23 this finite amount of money.

24 I'm happy to report, Your Honor, that we've made  
25 progress. As I had indicated in my letter of January 13th

1 to the Court, copies of which were provided to all of the  
2 parties to the mediation, the mediation I think had moved  
3 forward, I think all of the parties acted in good faith, it  
4 has not been an easy mediation, but we're at a point where  
5 there is some -- some agreements in principal that have been  
6 in various stages being, you know, put down on paper with  
7 term sheets and that sort of thing. The good news is there  
8 are some agreements. The unfortunate issue is that it's not  
9 everybody, and that what we have, and I don't -- will not go  
10 into this because Your Honor the agreements are still being  
11 finalized and ultimately I think the parties once they reach  
12 the agreement will be bringing 9019 -- the trustee will  
13 bring 9019 motions before the Court, but you have again in  
14 broad strokes it appears an agreement among -- agreements  
15 among the trustee, the estate of Stanley Chais, the Chais-  
16 related defendants, the State AG all sort of -- they're  
17 different agreements among those parties.

18 We still hope that there's a potential for being  
19 able to have the California plaintiffs become part of the  
20 agreement, but as things currently stand we're not there.

21 And again, I think -- I think the parties to the  
22 mediation have worked very hard and diligent, but at this  
23 point from just really a status position as to where these  
24 cases are, it seems to me, Your Honor, that in the next  
25 couple of weeks, if not sooner, the trustee will be coming



1 forward with, you know, motions in an effort to try to  
2 resolve the disputes, you know, again, with the Chais -- the  
3 estate, the Chais-related parties, as well as the State AG's  
4 Office.

5 Now there may be a need for some of these  
6 agreements to get approved in California in the various  
7 courts where those -- where the State AG's action is  
8 pending, I don't know that, but my purpose in coming before  
9 you, and again, thank you for making the time to talk to us,  
10 is really just to try to give you a sense as to what might  
11 be coming down the road, give you a sense as to where we are  
12 in this mediation process.

13 Again, I don't -- I don't think it is appropriate  
14 at this time to talk about the terms of the agreements,  
15 because again, they're not finalized, and ultimately, you  
16 know, they will be filed with the court.

17 We have -- I have attempted, Your Honor, in my  
18 capacity as the mediator to keep all of the parties abreast  
19 as to what was going on, because you had different groups  
20 speaking to one another, and some have been far more active  
21 than others. Just the way, you know, mediations sometimes  
22 go.

23 I think the general outline of the settlements  
24 that have been again reached in principal and are moving  
25 towards documentation, that's been shared with all of the

1 parties to the mediation in a call last week. We sort of  
2 tried to lay this stuff out in advance so that people  
3 understood directionally where the parties were going, and  
4 to the extent that they are not satisfied with that they  
5 have some fair warning that, you know, stuff is going to be  
6 -- motions are likely to be coming down the road, again,  
7 9019, and then whatever kinds of activities there may be in  
8 the two adversary proceedings. Again, the injunction action  
9 as well as the clawback action.

10 So, Your Honor, that was my purpose in asking for  
11 this conference and appearing before you today. I'm happy  
12 to answer any questions that you might have, but again, it  
13 was really more to give you an idea to try to set the table,  
14 if you would, for matters that are likely going to be coming  
15 before the Court in the next couple of weeks.

16 THE COURT: Thank you.

17 MR. GARRITY: All right.

18 THE COURT: Does anyone else want to be heard?

19 MR. WEPRIN: Your Honor, on behalf of the  
20 California plaintiffs, Barry Weprin from Milberg, and I  
21 guess -- and again, I don't want to address what happened in  
22 the mediation because we've agreed to keep that  
23 confidential, but I just wanted to let Your Honor know our  
24 position of what the effect of the mediation has been and  
25 how it has prejudiced our clients, because it came before

1 the Court where -- before -- on an injunction motion brought  
2 by the trustee against our clients and against the  
3 California AG, and I think subsequently the law is made --  
4 the Second Circuit I think has made clear in the Fairfield,  
5 Greenwich, and Merkin (ph) cases that the injunction most  
6 likely would have been denied had it been heard.

7 After it was briefed and then the day when we  
8 thought we were coming in for argument Judge Lifland took us  
9 into his chambers and at the time -- the Chais parties  
10 weren't even there, it was just the trustee and the  
11 California plaintiffs and the California Attorney General,  
12 and told us that he wanted to have a mediation to divide the  
13 Chais assets between our claims, which we were all amenable  
14 to, the trustee agreed only on the additional assumption --  
15 the expectation was going to be he said we will do it but  
16 only if it's over in 90 days, and the effect of it though  
17 has been that they've had a stay for three years, they've  
18 used that time to advance their claims against Chais to the  
19 point where they're going to get a judgment, our claims in  
20 California we still are, you know, a year or more away for  
21 trial, so they've sort of leapfrogged us, which is something  
22 that Judge Lifland -- and again, tragically Judge Lifland is  
23 not here to --

24 THE COURT: The leapfrogging through was settled.

25 MR. WEPRIN: Through a settlement, but --

1 THE COURT: So they're not litigating their claim,  
2 so --

3 MR. WEPRIN: Well --

4 THE COURT: -- if you settle you'll get your money  
5 also.

6 MR. WEPRIN: -- in effect they are and they're  
7 going to seek summary judgment is my understanding on some  
8 claims, which is the other part of it.

9 The other way we're prejudiced --

10 THE COURT: Summary judgment on claims that you --

11 MR. WEPRIN: Well, I think on claims -- again, the  
12 other way which we're prejudiced, because I think if we had  
13 been able to go forward we would have been able to get a  
14 judgment at least as quickly as they would have been able to  
15 get a judgment, now they've leapfrogged us.

16 But the other way is our understanding all along,  
17 and I thought everybody's understanding was that if -- even  
18 though we think that our claims are pari passu with the  
19 trustee's claims --

20 THE COURT: Are you saying that there's not enough  
21 money --

22 MR. WEPRIN: There's not enough money --

23 THE COURT: -- for the settlement amount and to  
24 pay you?

25 MR. WEPRIN: There's not enough money in the

1 settlement to pay us.

2 THE COURT: But the settlement is eminent, isn't  
3 that a ground to enjoin your lawsuit? That's one of the  
4 things the Second Circuit talked about.

5 MR. WEPRIN: Yeah, but that's only true because of  
6 the fact that we've been in mediation for three years --

7 THE COURT: Right.

8 MR. WEPRIN: -- where, you know, we -- which we  
9 were told was going to be over in 90 days and weren't able  
10 to go forward.

11 THE COURT: But you knew after 90 days it wasn't  
12 going to be over in 90 days, right?

13 MR. WEPRIN: Well but I guess the other part of  
14 it, Your Honor, is that our understanding, and I think Judge  
15 Lifland's understanding was that at the end of the process  
16 -- worse case at the end of the process if there was any  
17 money left over we would be free to go after it, and we  
18 learned for the first time last week that the trustee is  
19 going to take actions which are designed solely, we think,  
20 to prohibit us from going over money -- after money that's  
21 left over in the hands of the Chais-related entities.

22 THE COURT: You mean a (indiscernible) type  
23 injunction?

24 MR. WEPRIN: No, a different type of injunction.  
25 It's a -- again, we haven't seen the terms of it, but

1 basically it's assigning claims that the trustee has that  
2 don't have any value to the trustee but which the trustee  
3 could potentially use as an -- the Chais-related parties  
4 could use as an offset.

5 THE COURT: I think we have to wait to see that  
6 motion before we talk about whether or not --

7 MR. WEPRIN: But I guess the other -- the issue is  
8 though that -- I guess we feel that in terms of a  
9 distribution of the Chais assets, which was not supposed to  
10 be a race to the courthouse and which was supposed to be  
11 equitably made, we just don't think that that is being done  
12 in this process.

13 And, you know, our -- we have claims against the  
14 Chais-related entities that are in effect being settled in a  
15 case that doesn't have claims against the Chais-related  
16 entities.

17 THE COURT: I don't understand that.

18 MR. WEPRIN: Well --

19 THE COURT: I thought that the trustee's claims  
20 were the typical fraudulent transfer claims, they were  
21 distributees of the LMIS payments, right?

22 MR. WEPRIN: Yes.

23 THE COURT: So those are the claims that are being  
24 settled by the trustee.

25 MR. WEPRIN: Yes. But they're also -- we had

1 claim -- the Chais-related parties have substantial assets  
2 left over after settling the trustee's claims, and in the  
3 normal course -- worse case scenario we would have been able  
4 to pursue our claims against them, the California Attorney  
5 General did not have claims against the Chais-related  
6 parties, but as part of this settlement is going to be in  
7 effect setting up a fund with contributions from the Chais-  
8 related parties to -- as part of this effort to in effect  
9 preclude us from pursuing those additional assets.

10 THE COURT: But that's -- I mean that's between I  
11 guess you and the State of California, and if the state --  
12 if the court there is going to say if you opt into the  
13 settlement you waive your claims against the Chais-related  
14 parties, that's -- that's the concern of that court. It  
15 sounds like it makes sense, but that's the concern of the  
16 court. I suppose otherwise you're free to pursue your  
17 claims.

18 MR. WEPRIN: Mr. Gelfand is on the phone, do you  
19 have anything to add on that?

20 MR. GELFAND: Well, I think this is all going to  
21 be flushed out as soon as the motions are filed and  
22 objections to the potential settlement will be filed and  
23 we'll have the opportunity to litigate it then.

24 THE COURT: Okay.

25 MR. GELFAND: I don't -- you know, unfortunately I

1 don't think the mediation has quite achieved what the  
2 original hope was some two and a half years down stream.

3 THE COURT: I think it makes sense to wait to see  
4 the settlement proposal and read the objections.

5 MR. WEPRIN: Thank you, Your Honor.

6 THE COURT: Anyone else?

7 MR. SHEEHAN: I just want to say one thing, Your  
8 Honor, about this guy. Don't really need to do this, but I  
9 want to.

10 THE COURT: He's a fine man.

11 MR. SHEEHAN: Well not just that.

12 MR. WEPRIN: I don't think there's any dispute --  
13 no dispute on this, Your Honor.

14 MR. SHEEHAN: I've been in a lot of mediations, as  
15 Your Honor knows, been around a long time, this is one of  
16 the most contentious, difficult ones I've ever been in, I  
17 contributed to it as you well know, and I want to say that  
18 he's done a spectacular job.

19 THE COURT: You've contributed to some of the  
20 problem? I can't believe it.

21 (Laughter)

22 MR. SHEEHAN: It's unusual, I know.

23 THE COURT: Because you're usually such a calming  
24 influence.

25 (Laughter)



1 THE COURT: Maybe it's your low key demeanor.

2 MR. SHEEHAN: That's it.

3 THE COURT: Go ahead. I digress.

4 MR. SHEEHAN: All right, we digress. I just  
5 wanted to say that a superb job here.

6 THE COURT: All right. Let the record reflect  
7 he's patting Mr. Garrity on the shoulder.

8 MR. WEPRIN: Nothing that I said was intended to  
9 disparage --

10 THE COURT: All right. Is there anything else?

11 MR. GARRITY: No, Your Honor, it's -- just thank  
12 you again for your time. I don't think -- no one else would  
13 like to be heard.

14 THE COURT: All right. Nobody else wants to say  
15 something nice about you.

16 MR. GARRITY: Well, I'm still a little bit shocked  
17 about what just happened, Your Honor. I thank you.

18 (Laughter)

19 THE COURT: Thank you.

20 MR. GARRITY: Thank you.

21 THE COURT: I look forward to your motions.

22 (A chorus of thank you)

23 THE COURT: Have a nice day.

24 MS. GORDON: Thank you, Your Honor.

25 THE COURT: Thank you.

1 (Whereupon these proceedings were concluded at 10:34  
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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

Dawn South

Digitally signed by Dawn South  
DN: cn=Dawn South, o, ou,  
email=digital1@veritext.com, c=US  
Date: 2015.01.16 12:26:43 -05'00'

Dawn South

AAERT Certified Electronic Transcriber CET\*\*D-408

Date: January 16, 2015

Veritext

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|                            |  |   |   |
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